

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JANE DOE,

Plaintiff,

Case No. 18-cv-11295

-v-

THE CITY OF DETROIT,

Defendant.

PLAINTIFF'S MOTION TO PROCEED UNDER PSEUDONYM JANE DOE  
BEFORE HONORABLE MARK A. GOLDSMITH

Detroit, Michigan, Thursday, July 12th, 2018.

APPEARANCES:

FOR THE PLAINTIFF: CAROL A. LAUGHBAUM  
Sterling Attorneys at Law, P.C.  
33 Bloomfield Hills Parkway  
Suite 250  
Bloomfield Hills, MI 48304

FOR THE DEFENDANT: TIFFANY A. BOYD  
2 Woodward Avenue  
Suite 500  
Detroit, MI 48226

David B. Yarbrough, CSR, RMR, FCRR  
Official Court Reporter  
(313) 234-2619

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WITNESSES:

NONE

EXHIBITS

NONE

1 Detroit, Michigan.

2 Thursday, July 12th, 2018.

3 At or about 2:18 p.m.

4 -- --- --

5 THE CLERK OF THE COURT: Please rise. The United  
6 States District Court for the Eastern District of Michigan is  
7 now in session, the Honorable Mark Goldsmith presiding. You  
8 may be seated. The Court calls case number 18-11295, Doe  
9 versus the City of Detroit. Counsel, please state your  
10 appearances for the record.

11 MS. LAUGHBAUM: Good afternoon, your Honor. Carol  
12 Laughbaum on behalf of the plaintiff.

13 MS. BOYD: And good afternoon, your Honor. Tiffany  
14 Boyd on behalf of the city of Detroit.

15 THE COURT: All right. Good afternoon. We have  
16 plaintiff's motion to proceed under a pseudonym, so I've read  
17 your submissions. Ms. Laughbaum, you want to proceed?

18 MS. LAUGHBAUM: Yes. Thank you, your Honor. So this  
19 is plaintiff's motion to continue to proceed in this case under  
20 the pseudonym Jane Doe to protect her privacy rights and  
21 personal safety given the fact that she is transgender and  
22 already received repeated death threats because of her status  
23 as a transgender woman. To my knowledge, there's no case law  
24 where a motion of this type involving a transgender person  
25 seeking to shield his real name in court filings has been

1 denied. I have cited three cases where the plaintiff has been  
2 granted this type of relief, all involving transgender  
3 individuals. That would be Doe v. Blue Cross Blue Shield of  
4 Rhode Island, Doe v. Frank and Highland v. Local School  
5 District v. US Department of Education as well as varying other  
6 cases, not -- various other cases not specifically involving  
7 transgender persons, but involving exotic dancers or  
8 individuals objecting to the Bible and religion being taught in  
9 public schools.

10 THE COURT: Pardon me for interrupting. So it's my  
11 understanding the City knows who this person is.

12 MS. LAUGHBAUM: Right.

13 THE COURT: So the City knows this person's legal  
14 name.

15 MS. LAUGHBAUM: Correct.

16 THE COURT: Umm --

17 MS. LAUGHBAUM: Well, let me correct that. Those  
18 within the City that have a need to know know. I think, you  
19 know, the key players obviously know who she is. She filed her  
20 internal human rights complaint and her EEOC charge and her  
21 police report under her real name. The concern is that if her  
22 name is in the public record, there may be copycat, you know,  
23 people out there --

24 THE COURT: Well, I'll get to that in a moment.

25 MS. LAUGHBAUM: Sure.

1 THE COURT: I'm interested in what the City knows.

2 So certainly the City attorneys --

3 MS. LAUGHBAUM: They've known for over a year,

4 correct --

5 THE COURT: -- know the name of this person. So if I

6 were to grant this motion, I'm just wondering how we would be

7 proceeding here. If the City wants to subpoena records from

8 whomever, would any order I would be granting here stop the

9 City from doing that?

10 MS. LAUGHBAUM: Well, no, I envision -- no, I

11 envision entering a protective order that basically provides

12 that anything with the plaintiff's name on it, if any documents

13 are filed with the Court that include the plaintiff's real

14 name, those would be redacted. I'm happy to work with the City

15 attorneys to, you know, get subpoenas out or I can get the

16 records on their behalf and provide them.

17 I'm not trying to shield any substantive information

18 or any discovery from coming out, you know, that's reasonable

19 in any normal employment case. It's just a matter of keeping

20 her name out of the public record, umm, that's my, that's my

21 concern and that to protect her from people within the City

22 that don't need to know this information, but might be

23 sympathetic to or harass her or people in the public at large,

24 prospective employers who have no legitimate reason to know her

25 true name.

1           None of the facts, your Honor, I'm trying to shield,  
2           no discovery I'm trying to shield. It's just the name of my  
3           client being put out there and, you know, subject to a Google  
4           search by anybody with a, you know, smart phone or computer.

5           THE COURT: Now these death threats, are they from  
6           people that your client can identify or are these anonymous  
7           threats?

8           MS. LAUGHBAUM: Well, technically they're anonymous.  
9           I think it's almost a fore-gone conclusion who the actual  
10          person, who the source of these threats is and my allegations  
11          in the Complaint sort of point that out. I think it's a, you  
12          know, an open secret at the City who it is. There's an  
13          individual, a high-level manager who has openly made comments  
14          to others about how he thinks my client's transition is  
15          disgusting and is believed to be the source of the notes and  
16          that I presume will come out in discovery, but --

17          THE COURT: You're saying this person is the author  
18          of the death threats?

19          MS. LAUGHBAUM: We believe so. There were three  
20          different notes that sort of increasingly ominous threats  
21          against her life. There will be blood on your heads -- on your  
22          hands. Umm, I have exact language here.

23          THE COURT: Does this person know about this lawsuit?

24          MS. LAUGHBAUM: I, I'm not aware. I don't know. I  
25          believe they're still, you know, employed by the City and this

1 is somebody my client actually at least in the past and I think  
2 continues to have to interact with on a regular basis. They're  
3 in the same meetings, umm, at times, umm, but the last note  
4 was --

5 THE COURT: So keeping your client's name out of the  
6 paper would protect her from whom exactly?

7 MS. LAUGHBAUM: Well, it would protect her from, I  
8 mean, I can't protect her, I mean, part of the case is that the  
9 City has already failed to protect her from whoever this, you  
10 know, disturbed individual within the City is. I'm trying to  
11 avoid, you know, a copycat situation or others getting a hold  
12 of her name and deciding, you know, they're like-minded and  
13 they also wish her harm because of her status, so, you know, I  
14 agree with you that the ship has sailed as far as her harasser,  
15 he obviously knows who she is and the people in the government  
16 that have been involved in this case and have presumably  
17 investigated this case obviously, but the people that have a  
18 need to know already need to know so any further disclosure of  
19 her name would only be to people that have no legitimate need  
20 to know or members of the public, prospective employers, you  
21 know, et cetera, et cetera and I think this case fits squarely  
22 within the Porter factors, that's the seminal Sixth Circuit  
23 case and in particular Porter factor number two and these are  
24 factors under which privacy interests can outweigh the  
25 presumption of open judicial procedures. Porter factor number

1 two is whether prosecution of the suit will require the  
2 plaintiffs to disclose information of the utmost intimacy which  
3 is clearly the case here.

4 Your Honor, the Doe v. Blue Cross Blue Shield of  
5 Rhode Island case has particularly apt language and rationale  
6 for why granting a transgender plaintiff's motion to proceed  
7 under a pseudonym is appropriate and this is back, this case is  
8 from '92, but let me just read some of the language and I'm  
9 reading from 794 Fed. Supp, beginning on page 74. The most  
10 common instances and it's talking about where anonymity is  
11 granted, are cases involving abortion, mental illness, personal  
12 safety, homosexuality, transsexuality and illegitimate or  
13 abandoned children in welfare cases. The common thread running  
14 through these cases is the presence of some social stigma or  
15 the threat of physical harm to the plaintiffs attaching to  
16 disclosure of their identities in the public record.

17 In this case, these threats came from inside City  
18 Hall. The first one was a note that said it is an abomination  
19 for a man to put on a woman's garment, you were born a man, no  
20 makeup or weave will change that, even getting rid of your  
21 penis won't, stop shaming yourself, we don't want people like  
22 you working here. The second note included if a man has sexual  
23 relations with a man as one does with a woman, both of them  
24 have done what is detestable, they're to be put to death, their  
25 blood will be on their own heads and finally you were warned,



1 now I will show you better than I can tell you, God have mercy  
2 on your soul.

3 So the point, your Honor, is that these threats are  
4 very real. They're not illusory. They're not speculation and  
5 the plaintiff and the defendants have the interest in this not  
6 escalating and some other disturbed individual either at the  
7 City or in the public gets a hold of my client's real name and  
8 decides that they, they wish her harm.

9 The threats in this case, you know, I'd like to  
10 contrast those with those in the Porter case. Remember the  
11 Porter case was the case where plaintiffs were challenging the  
12 teaching of the Bible in the public schools and the threats in  
13 that case were published in a local newspaper and they were if  
14 I knew your name, I would tell you what I thought of you.  
15 Those threats which are obviously less ominous than the threats  
16 in my case were found sufficient to warrant the protection of  
17 allowing the plaintiff to proceed under pseudonym in that case,  
18 so I'm not sure why the City wouldn't want to protect this  
19 person's identity. It's in everyone's best interest. By  
20 fighting this, if successful, the City is potentially just  
21 exposing themselves to additional liability in this case. It  
22 makes no sense and, you know, unfortunately it smacks of  
23 retribution or retaliation.

24 There is zero prejudice to defendants if this motion  
25 is granted. As I said, she's already used her name with the

1 people that need to know and --

2 THE COURT: Well, they claim that they're going to be  
3 hindered somehow in pursuing their defense of the case.

4 MS. LAUGHBAUM: Well, I think I've addressed every  
5 concern that they've raised. The subpoenaing records, I will  
6 make sure they get all relevant records they want. I'm not  
7 saying we can't utter her name in this litigation, I'm just  
8 saying let's not file it in the public record, that's it, so I  
9 don't understand how there's prejudice in the least. In the  
10 cases I've cited the courts have agreed that, you know, this is  
11 the proper way to proceed and the parties can work out a  
12 protective order that, you know, protects everyone's interests.

13 THE COURT: So if they take a deposition of someone,  
14 I assume they can ask about this person by name at a  
15 deposition.

16 MS. LAUGHBAUM: Sure and I would ask only -- I would  
17 hope -- I would like the protective order to have a provision  
18 in it saying in essence if we're filing dep transcript on the  
19 court docket, we will, you know, take out the plaintiff's name.  
20 So I'm not, you know, substantively everything is public except  
21 the plaintiff's real name and that's it, so --

22 THE COURT: Okay, I understand.

23 MS. LAUGHBAUM: Thank you.

24 THE COURT: Thank you. All right, let's hear from  
25 the City.

1 MS. BOYD: Good afternoon, your Honor.

2 THE COURT: Hello.

3 MS. BOYD: It is the City's position that as you know  
4 there's a strong presumption in favor of having open judicial  
5 proceedings and identifying parties is part of that open  
6 proceeding. To that end, the courts have only found that it is  
7 in exceptional cases where a plaintiff may proceed anonymously.  
8 To that end, the plaintiff must present a compelling interest  
9 in overcoming that presumption in order to proceed. We do not  
10 believe that the plaintiff has met that burden in this case --

11 THE COURT: Well, what about the death threats?

12 MS. BOYD: The threats that she allege are making, it  
13 sounds like they're mostly internal. That's the only thing  
14 that she's put on the record are internal threats that are the  
15 very issue of this case. The last threat that she mentioned in  
16 her Complaint occurred in May have 2017, your Honor. That was  
17 over a year ago. Since then, the complainant has -- the  
18 plaintiff, excuse me, has been working in the same department  
19 with those same people among those who she's alleging made  
20 those threats for over a year. There have been no further  
21 allegations of any threats since then. The City has installed  
22 cameras and locks on the office doors up there. She is --  
23 there's nothing else in the record outside of those threats  
24 where she's saying the threats have come from. They've all  
25 come from the internal threats and the City has cameras and

1 locks on the doors and she's not making any allegations that  
2 nothing has happened in the year since then.

3 THE COURT: Let's talk about the prejudice. What  
4 specific prejudice can you identify? You talked about in your  
5 papers about subpoenaing records, but you've heard plaintiff's  
6 counsel say she doesn't have any objection to the City getting  
7 regards using this person's real name. Plaintiff's only  
8 request is that her name be kept out of what's publicly filed.  
9 So if you're able to use her name to get records, if you can  
10 ask witnesses at a deposition about her using her name, what  
11 exactly is the prejudice then to the City?

12 MS. BOYD: Well, she's offered to get documents for  
13 us and I submit that we should not be held captive to  
14 plaintiff's counsel obtaining documents. We should be able --  
15 that we would ordinarily be able to get on our own via  
16 subpoena. Also there's witnesses and people that we need to  
17 talk to, yes, use her name, but we can't control if those  
18 witnesses go out and mention, we can't control those things so  
19 we would automatically be in violation of that order. Also, we  
20 need to be able to use her name in an investigation.

21 THE COURT: Well, again I don't hear the plaintiff  
22 saying that you couldn't use her name in doing your  
23 investigation, it's just whatever gets publicly filed in a case  
24 would not reveal her name, so if there were motions filed, the  
25 caption wouldn't reflect her name, the body of the submission

1 wouldn't reflect her name, but whatever you do behind the  
2 scenes to prepare your defense, I'm hearing plaintiff's counsel  
3 say there's no objection to you using this person's real name  
4 so again I'm trying to understand how the City is going to be  
5 handicapped in some way in preparing its, its defenses to this  
6 case.

7 MS. BOYD: Because what she's asking us to do is  
8 contain the use of the plaintiff's name and I don't see how we  
9 will be able to do that 'cause if someone is --

10 THE COURT: Well, let's say you want to find out more  
11 about her medical history, maybe that bears on some claim here  
12 of mental distress, so getting the records from any, say,  
13 mental health providers you'd have to use this person's name  
14 and I'm hearing the plaintiff's counsel telling us she has no  
15 objection to that. If you needed to subpoena records from, I  
16 don't know, other employers, former employers, where ever  
17 you're going to be looking for your facts, you're going to be  
18 able to use her name on those subpoenas to get her records. So  
19 again I'm trying to find out as a practical matter where's the  
20 handicap to the City here?

21 MS. BOYD: May I have one moment, your Honor?

22 THE COURT: Yes, go ahead.

23 (Pause)

24 MS. BOYD: Your Honor, so outside of obtaining any  
25 records, there is public perception which is part of our

1 defense as well. The City will be out there. There's people  
2 who will be named and their names will be out there and they  
3 will withstand certain scrutiny. This case is going to garner,  
4 whether she's named or not, garner scrutiny from the LGBT  
5 community and things in the City is out there and we're having  
6 to have under scrutiny while she's hiding behind the Jane Doe  
7 so to speak and will not be under the same scrutiny. Jury pool  
8 sees this, they're only looking at the City and our side and  
9 scrutinizing our side and they won't be able to scrutinize her.

10 THE COURT: I'm sorry, who will not be able to  
11 scrutinize her?

12 MS. BOYD: The public. This is going to be a public  
13 case. LGBT community is very strong, they're out there and  
14 jury pools could potentially be tainted 'cause they're only  
15 hearing one side that the City did this, the City did that  
16 while she's able to hide her hand behind being Jane Doe. So  
17 even outside of the record --

18 THE COURT: Well we're not going to seat jurors who  
19 know anything about this case, are we?

20 MS. BOYD: It's been in the paper. It's been in the  
21 paper that this has been filed against the City.

22 THE COURT: I know, but we're probably at least a  
23 year and-a-half to two years or more away from a trial, right?

24 MS. BOYD: Even so, your Honor, this is a hot-button  
25 issue --

1           THE COURT: If we get somebody in a jury pool that  
2           says that he or she knows about this case, we're probably not  
3           going to put that person on this jury, are we? We're going to  
4           want jurors who know nothing about this case, right?

5           MS. BOYD: But I don't see -- it's already been in  
6           the papers. We can't control whether people reading the papers  
7           have formulated their own opinion of it. That's something that  
8           we can't control --

9           THE COURT: Well, what --

10          MS. BOYD: -- and she's gone to the papers herself,  
11          even though she's done it anonymously, but she's identified  
12          herself as a city employee working in the finance department.  
13          So whatever fear that she's having, she's gone to the media  
14          herself and put it in the media even before filing this case.

15          THE COURT: But the media have not revealed her name;  
16          is that right?

17          MS. BOYD: To my understanding, know they have not,  
18          but the markers that have been given, an employee working in  
19          the City of Detroit office of finance grants management,  
20          there's not too many people. That's something that's a  
21          FOIA-able. They can FOIA the names of those employees.

22          THE COURT: Well, I'm not sure the implications for  
23          the media are really for me to worry about other than your  
24          concern about juror bias, but it almost sounds like you want to  
25          have your shot at influencing the jury pool as much as she

1     apparently according to your view of the world is trying to  
2     influence the jury pool, but putting all that aside, let's  
3     assume the City wanted to rebut whatever she's putting out  
4     there; according to you she's putting something out there that  
5     the City disagrees about. What stops you from refuting what  
6     she says in the media if that's what you want to do, but just  
7     not mention her name? If you want to say her charges are  
8     unfounded, if you want to lay out your defenses, whatever they  
9     might be, what would stop you from doing that other than you  
10    can't say what her name is?

11           MS. BOYD: We should be able to identify her in the  
12    same way that she's identifying our employees and having their  
13    names out there as having allegedly taking these actions.

14           THE COURT: Um-hmm.

15           MS. BOYD: And then aside from the detriment, she has  
16    the burden of proving a compelling interest for this Court to  
17    grant the motion and it's our position that she has not done  
18    so. In looking at the cases that she cited where it was  
19    granted, I read Doe v. Frank and unless I'm reading the wrong  
20    one, that one dealt with alcoholism and did not deal with a  
21    transgender issue.

22           In regard to the Blue Cross issue that she cites from  
23    1992, there was actual evidence in the record of harm that that  
24    person had suffered from identifying as trans. I believe that  
25    person had a business and they had actually lost business once



1 people were able to find out that they were transgender. I  
2 would also note that that case is from 1992 and while we may  
3 not necessarily be where we need to be this day and age, but I  
4 highly doubt the City of Detroit was having Pride Week back in  
5 1992. I believe it's a different, umm, there's a different  
6 circumstance. There's a different society than that took place  
7 in 1992.

8 Another thing I would note, her other case that she  
9 indicate of Highland v. Local School, that was a minor child in  
10 that instance where it was granted. It was an 11-year-old  
11 transgender child. There was differences in the record. In  
12 looking at Doe v. Stigal, the Court noted that there was  
13 evidence of open hostility towards the plaintiff's views in the  
14 record. Again citing in the Porter case, there was evidence in  
15 the record, I believe plaintiff's counsel even cited it where  
16 there were letters written said if I find out who you are,  
17 we're going to do this. All of those things are absent from  
18 this case.

19 All she's alleging are internal alleged threats that  
20 she's alleging that are at the issue of this case, none of  
21 which have taken place in over a year. There needs to be  
22 something more than just citing threats that are over a year  
23 old at this point especially after the City has taken actions,  
24 put locks on the doors and installed cameras to prevent any of  
25 that from happening and so far haven't heard plaintiff say

1 anything has happened since then, it's worked.

2 THE COURT: Okay. Anything else?

3 MS. BOYD: No.

4 THE COURT: All right, thank you. Anything else, Ms.  
5 Laughbaum?

6 MS. LAUGHBAUM: Nothing unless the Court has further  
7 questions for me.

8 THE COURT: Well, there was an argument made here by  
9 Ms. Boyd about the plaintiff sort of having something of a free  
10 shot in that she could critique or criticize City people by  
11 name, but the City could not return the fire. What's your  
12 response to that?

13 MS. LAUGHBAUM: Well, I guess number one, that has  
14 not been deemed a legitimate issue in any of the other cases  
15 that we've cited to the Court and number two, there's nothing  
16 to prevent the City from moving for a protective order. If  
17 they feel that they have some, you know, privacy interest that  
18 need to be shielded, so, you know, they're free to do that.

19 THE COURT: A protective order in the sense of  
20 preventing her from commenting publicly on the case?

21 MS. LAUGHBAUM: No, if they're seeking to shield  
22 names, I mean, if tit for tat, if that's what they're worried  
23 about that my person's name won't be out there, but theirs  
24 will, you know, I mean, if that's -- I don't know that that's a  
25 legitimate concern, but it's certainly not an insurmountable

1 one if it is because, umm, you know, my client doesn't have to  
2 divulge specific names either, umm, but I -- as I said, none of  
3 the case law addresses that. I don't really see it as a  
4 legitimate concern. These are public people in public office,  
5 umm, and, you know, just by nature of their positions, they're  
6 subject to some scrutiny with respect to their, umm, you know,  
7 on-the-job conduct at taxpayers's expense.

8 THE COURT: All right. Okay, we'll be issuing an  
9 opinion on this. While I have you here, are there any  
10 housekeeping matters that we need to address about our case?

11 MS. LAUGHBAUM: I'll not aware of any. We've got  
12 paper discovery in the works. I don't think it's due yet from  
13 the City so we haven't run into any issues yet. You know, if  
14 the Court is going to grant this motion, obviously we have to  
15 work out a protective order. That could involve the Court,  
16 might require the Court's involvement, but hopefully not. I'm  
17 not aware of any other issues.

18 MS. BOYD: I'm not aware of any issues either, your  
19 Honor.

20 THE COURT: Okay. I want to look at something for a  
21 minute.

22 (Pause)

23 THE COURT: All right. Then that concludes our  
24 hearing. Thank you.

25 (Hearing concluded at 2:44 p.m.)

C E R T I F I C A T E

I, David B. Yarbrough, Official Court  
Reporter, do hereby certify that the foregoing pages  
comprise a true and accurate transcript of the  
proceedings taken by me in this matter on Thursday, July  
12th, 2018.

11/17/2020

Date

/s/ David B. Yarbrough

David B. Yarbrough,  
(CSR, RPR, FCRR, RMR)  
231 W. Lafayette Blvd.  
Detroit, MI 48226